1 2 3 4 5 UNITED STATES DISTRICT COURT WESTERN DISTRICT OF WASHINGTON, SEATTLE 6 7 ISOMEDIA, INC. a Washington corporation; ISOMEDIA.COM, L.L.C., NO. 8 a Washington limited liability company, COMPLAINT FOR PENALTIES AND DAMAGES UNDER THE CAN-SPAM ACT OF 2003 (15 U.S.C. § Plaintiffs, 10 7701 ET SEQ.); AND FOR ٧. 11 TELEBRANDS, INC., a New Jersey INJUNCTIVE RELIEF corporation; TELEBRANDS 12 CORPORATION, a New Jersey [JURY DEMANDED] corporation; and JOHN DOES, I-XX, 13 Defendants. 14 PARTIES, JURISDICTION, VENUE 15 1. **ISOMEDIA, INC.** is a Washington corporation, with its principal place of business 16 in Seattle, Washington, and at all relevant times hereto was duly registered and 17 licensed to do business in the State of Washington. 18 19 2. **ISOMEDIA.COM, LLC**, is a Washington Limited Liability Company, with its principal place of business in Seattle, Washington, is an entity wholly owned and 20 managed by Isomedia, Inc., and at all relevant times hereto was duly registered and 21 licensed to do business in the State of Washington. (referenced collectively herein 22 together with Isomedia, Inc. as "ISOMEDIA" or "Plaintiff"). 23 24 25 COMPLAINT FOR DAMAGES, PENALTIES,

AND INJUNCTIVE RELIEF -1

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- 3. Plaintiffs are informed and believe that Defendant **Telebrands**, **Inc.** ("**Telebrands**") is a corporation organized under the laws of New Jersey, with its principal place of business located in Fairfield, New Jersey.
- 4. Plaintiffs are informed and believe that Defendant **Telebrands Corporation** (herein together with Telebrands, Inc. collectively referred to alternatively as "**Telebrands**" or "**Defendant(s)**") is a corporation organized under the laws of New Jersey, with its principal place of business located in Fairfield, New Jersey.

Jurisdiction and Venue

- 6. Jurisdiction is proper pursuant to 28 U.S.C. §1331 (federal question), for violations of the CAN-SPAM Act of 2003 (15 U.S.C. § 7701 et seq.), and original jurisdiction under 15 U.S.C. § 7706(g)(1) for cases involving a civil action by an internet access service adversely affected by a violation of 15 U.S.C. § 7704(a)(1), 15 U.S.C. § 7704(b), or 15 U.S.C. § 7704(d), or a pattern of practice that violates paragraphs (2), (3), (4), or (5) of section 15 U.S.C. § 7704(a). The Court also has original jurisdiction pursuant to 28 U.S.C. §1332 (diversity).
- 7. Defendants have purposely availed themselves of the privileges of conducting commercial activity in the instant forum, and the exercise of jurisdiction by this Court is reasonable since Defendants should have known that they would be subject to the jurisdiction and laws of the forum state when they sent, or had commercial emails sent, to email accounts in the State of Washington such as those owned or maintained by Plaintiff. *Aitken v. Communications Workers of America*, 496 F. Supp. 2d 653 (E.D. Va., 2007); *Verizon Online Services, Inc. v. Ralsky*, 203 F. Supp. 2d 601 (E.D. Va., 2002); and *Internet Doorway, Inc. v. Parks*, 138 F. Supp. 2d 773(S.D. Miss., 2001).

Venue is proper pursuant to 28 U.S.C. §1391, as a substantial part of the

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unlawful actions by the Defendants occurred in this judicial district, namely the subject emails were sent to email addresses, and received on servers and protected computers located in the State of Washington, and particularly in the Western District of Washington.

General Allegations

- 9. The United States Congress in enacting the CAN-SPAM Act of 2003 (15 U.S.C. § 7701 et seq.) found:
- a. The convenience and efficiency of electronic mail are threatened by the extremely rapid growth in the volume of unsolicited commercial electronic mail.

 Unsolicited commercial electronic mail is currently estimated to account for over half of all electronic mail traffic, up from an estimated 7 percent in 2001, and the volume continues to rise. Most of these messages are fraudulent or deceptive in one or more respects.
- b. The receipt of unsolicited commercial electronic mail may result in costs to recipients who cannot refuse to accept such mail and who incur costs for the storage of such mail, or for the time spent accessing, reviewing, and discarding such mail, or for both.
- c. The receipt of a large number of unwanted messages also decreases the convenience of electronic mail and creates a risk that wanted electronic mail messages, both commercial and noncommercial, will be lost, overlooked, or discarded amidst the larger volume of unwanted messages, thus reducing the reliability and usefulness of electronic mail to the recipient.

- d. The growth in unsolicited commercial electronic mail imposes significant 1 monetary costs on providers of Internet access services, businesses, and educational 2 3 and nonprofit institutions that carry and receive such mail, as there is a finite volume of mail that such providers, businesses, and institutions can handle without further 4 investment in infrastructure. 5 e. Many senders of unsolicited commercial electronic mail purposefully 6 disguise the source of such mail. 7 8 10. During all times relevant hereto, and through the present, Plaintiff ISOMEDIA 9 was a Washington resident that provided and enabled email services for multiple users 10 on a computer server that provides email forwarding services, domain registration and 11 updating, site construction, hosting and maintenance to Plaintiff's customers. 12 11. At all relevant times herein ISOMEDIA was an "internet access service" ("IAS") 13 as defined under 15 USC 7702(11) and 47 USC 231(e)(4). 14

 - 12. The email accounts hosted and served by Plaintiff include email accounts owned by third-party customers of Plaintiffs' IAS, and also include email accounts owned by Plaintiffs, collectively the "Email Addresses" and/or "Recipient Address" and individually and generically an "Email Address" (listed and attached hereto as Exhibit "A")
 - 13. During 2008-2010 Plaintiff received numerous electronic-mail messages sent and/or initiated by or on behalf of Defendants and addressed to the Email Addresses. (collectively the "Emails" or individually and generically as an "Email").
 - 14. The Emails, and each of them, were received by ISOMEDIA on its servers located in Seattle, Washington.

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- 15. On or about December 15, 2008, Plaintiff, through its attorneys, sent a letter to Defendant Telebrands at an address advertised in numerous of the Emails, which letter requested that Defendants cease and desist from sending further emails to a list of domains hosted on Plaintiff's servers and further advised Defendants that the Emails violated the CAN-SPAM Act.
- 16. Defendants have received numerous consumer complaints about their marketing spam that violates the CAN-SPAM Act. As a result of these complaints, and the resultant publicity, as well as Plaintiff's letter, Defendants were on notice, and therefore knew or consciously avoided knowing, that their Email violated the CAN-SPAM Act, and yet they continued to send it to Plaintiff.
- 17. Each of the Emails, violate the law in one or more of the following ways:
 - fails to include, or contain a valid physical address in the body of a. the email, or contains multiple addresses, none of which identify the actual sender clearly and or conspicuously in violation of 15 USC 7704(a)(5)(A) (iii);
 - uses an originating electronic mail address, domain name, or b. Internet Protocol address the access to which for purposes of initiating the message was obtained by means of false or fraudulent pretenses or representations in violation of 15 USC 7704(a)(1)(A);
 - C. fails to accurately identify the actual sender of the Email in the header "From" name line and or "Return Path" and/or "Transmission" Path", or in the body of the Email and/or contains, or is accompanied by, header information that is materially false or materially misleading in violation of 15 USC 7704 (a)(1), including, but not limited to the use of cloaked or hidden domain registration information;
 - d. fails to include and/or maintain a functioning return electronic mail address, or other Internet-based mechanism, capable of receiving messages or communications a recipient may use requesting not to

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receive future electronic mail messages from that sender, for the 30 day period mandated under 15 USC 7704(a)(3);

- e. was sent to and received at the Recipient Addresses subsequent to notice provided to Defendant to cease and desist sending unsolicited, unwanted, and unlawful Email in violation of 15 USC 7704(a) (4);
- f. was sent from a domain which used scripts or other automated means to register for multiple domains, electronic mail accounts or online user accounts from which to transmit to a protected computer, or enable another person to transmit to a protected computer, a commercial electronic mail message that is otherwise unlawful in violation of 15 USC 7704(b)(2);
- g. was sent as part of pattern or practice that violates 15 USC 7704(a) sections (1), (2), (3), (4) or (5).
- 18. Defendants initiated the transmission of the Emails, and each of them. In the alternative, Defendants conspired or otherwise acted in collusion with another or others, or assisted another or others to transmit the Emails, and each of them.
- 19. As a result of the receipt of spam in general, including the receipt of the Emails at issue herein, Plaintiff has, incurred substantial costs, and suffered significant damages including, but not limited to: had to purchase and/or configure additional servers; had to purchase additional bandwidth; had to pay technical staff to deal with spam and spam related issues in addition to other labor costs related to dealing with spam; has lost hundreds of customers relating to spam issues; had to design, purchase and operate a large anti-spam and anti-virus scanning system comprised of a cluster of more than a dozen dedicated servers whose only functions are for filtering spam and viruses from e-mail addressed to users of Plaintiff's services; had to pay for commercial anti-spam services on an ongoing basis; has experienced system and network crashes.

FIRST CAUSE OF ACTION – CAN-SPAM ACT 15 U.S.C. §7701 et seq.

- 20. On the basis of the facts set forth herein, Defendants initiated the transmission of the Emails, and each of them, to a protected computer in violation of 15 U.S.C. §7704(a)(1) and/or (3), and/or (4), and/or (5) and/or engaged in a pattern or practice in violation of §7704(b)(2) causing damage to Plaintiff ISOMEDIA as the provider of the Internet access service receiving each such Email, and entitling Plaintiff to statutory damages of \$100.00 and/or \$25.00 per each such violation as provided in 15 U.S.C.
- 21. Defendants did willfully and knowingly so act in violation of the provisions of 15 U.S.C. §7704(b).
- 22. Plaintiffs are entitled to treble all statutory damages as set forth in 15 U.S.C. §7706 (g)(1)(C).
- 23. Plaintiffs, pursuant to 15 U.S.C. §7706 (g)(1)(A), furthermore seek a preliminary and permanent injunction against the Defendants for their current and future violations of the CAN-SPAM ACT of 2003 as Plaintiffs and members of the general public will continue to incur damages as a result of Defendants' unlawful actions.
- 24. Plaintiffs furthermore seek their attorney fees and costs against Defendants pursuant to 15 U.S.C. §7706 (g)(4).

REQUEST FOR RELIEF

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§7706(g)(3).

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1 Plaintiff respectfully requests the following relief: 2 3 1. Entry of a Judgment against the Defendants in the amount of \$100 for each violation of 15 U.S.C. §7704(a)(1); \$25 for each violation of 15 U.S.C. §7704(a) 4 (3) and/or (4), and/or 15 U.S.C. § 7704(d), or a pattern of practice that violates 5 paragraphs (2), (3), (4), or (5) of section 15 U.S.C. § 7704(a), plus such other 6 and further damages as may be proved at trial, plus treble damages to the extent 7 permitted by 15 U.S.C. §7706 (g) (3) (C), plus prejudgment and post-judgment interest at the highest rate permitted by law, plus cost of suit and reasonable 8 attorney fees pursuant to 15 U.S.C. §7706 (g) (4); 9 10 2. Entry of a permanent injunction against Defendants prohibiting Defendants from 11 sending or causing to be sent commercial electronic mail messages to Email addresses 12 at domains hosted by Isomedia. 13 3. Such other and further relief as the Court deems just and equitable. 14 15 RESPECTFULLY SUBMITTED this 29th day of July, 2010. 16 i.JUSTICE LAW, P.C. DOUGLAS E. MCKINLEY, JR 17 Attorney at Law 18 /S/ Robert J. Siegel /S/ Douglas E. McKinley, Jr. 19 Robert J. Siegel, Douglas E. McKinley, Jr., WSBA #17312 WSBA#20806 20 Attorney for Plaintiffs Attorney for Plaintiffs 21 22 23 24 25

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EXHIBIT "A" 1 To: Isomedia v Telebrands, Inc., et al. 2 3 The time frame over which the emails were sent 4 The time frame for the Email sent by or on behalf of 5 Defendants and for which Plaintiff seeks recovery in this lawsuit is 6 Date of First Alleged Email: On or about May 30, 2008 7 **Date of Most Recent Email:** On or about March 25, 2010 (ongoing) 8 9 A brief factual basis upon which Isomedia claims the defendant sent the emails. 10 Plaintiff alleges that the emails attributed to Defendant exhibit at least one, and typically all, of the following indicia that Defendant, or agents acting on behalf of 11 Defendant, sent the email. 12 At least some of the Emails attributed to Defendants include a representation that a recipient may contact the sender of the Email by writing to a 13 mailing address stated in the email to which Plaintiff did send a letter requesting that the sender cease and desist from sending further email; 14 15 В. The emails attributed to Defendants advertise Defendants' products and/or services indicating that either Defendants sent the email, or Defendants contracted with 16 a third party to send it on Defendants' behalf; 17 The emails at issue contain an Internet URL that, if activated, ultimately re-directs the recipient to a web site owned, and/or operated, and/or maintained, and/or 18 controlled by Defendants, the commerce generated by which would inure to Defendants' benefit. 19 20 The addresses and domain names that received the emails. 21 COMPLAINT FOR DAMAGES, PENALTIES, 22

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Phone/Fax: 888-839-3299

The Email was sent to and received at the following individual email addresses 1 (including the domain name for each address, and the number of emails sent to each 2 3 address) aclark@1stop.com 1 4 alisa@1stop.com 2 bobp@1stop.com buchanan@1stop.com 1 5 bwalker@1stop.com cb@1stop.com 6 chess@1stop.com 3 2 chuckm@1stop.com 7 cic@1stop.com 6 cjb@1stop.com 2 8 13 danj@1stop.com dave@1stop.com 2 9 2 david@1stop.com davids@1stop.com 11 denis@1stop.com 1 10 diamond@1stop.com 2 dpi@1stop.com 11 dward@1stop.com 2 edward@1stop.com 17 12 genius@1stop.com 2 geoff@1stop.com 13 get@1stop.com golden@1stop.com 11 14 heath@1stop.com 8 jac@1stop.com 109 jennifer@1stop.com 3 15 7 jimbo@1stop.com jimw@1stop.com 34 16 jperry@1stop.com 5 kirk@1stop.com 1 17 lyndon@1stop.com 68 magnet@1stop.com 18 mail@1stop.com 27 mam@1stop.com 19 mattw@1stop.com 1 mel@1stop.com 106 melodie@1stop.com 67 20 michaels@1stop.com 2 michiko@1stop.com 9 21 mikeh@1stop.com COMPLAINT FOR DAMAGES, PENALTIES, 22 AND INJUNCTIVE RELIEF -10 ISOMEDIA v. TELEBRANDS, INC., et al. 23 i.Justice Law, PC PO Box 25817 Seattle, WA 98165-1317

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	mwood@1stop.com 14
1	nic@1stop.com 86
	nico@1stop.com 1
2	price@1stop.com 85
	raul@1stop.com 2
3	regan@1stop.com 3
5	rjb@1stop.com 1
4	rjw@1stop.com 3
4	rturner@1stop.com 10
_	saul@1stop.com 1
5	scotth@1stop.com 2
	stephens@1stop.com 2
6	steve@1stop.com 1
	steveh@1stop.com 8
7	sue@1stop.com 12
	tjones@1stop.com 1
8	val@1stop.com 1
J	viking@1stop.com 2
9	wesmar@1stop.com 1
	wil@1stop.com 1
10	winston@1stop.com 2
10	yoko@1stop.com 3
1.1	mark@allphaseplumbing.com 27
11	accounts@anzcropacifica.com 1 giovanni@anzcropacifica.com 1
	giovanni@anzcropacifica.com 1 teresa@anzcropacifica.com 1
12	teresa@avocetconsulting.com 16
	dark@berryhillsoftware.com 1
13	dave@berryhillsoftware.com 4
	rcraine@cascadealarm.com 35
14	sdow@cascadealarm.com 27
	smarkham@cascadealarm.com 81
15	afa@cnw.com 1
	ajean@cnw.com 31
16	anne@cnw.com 145
	auctions@cnw.com 8
17	avalanch@cnw.com 2
-,	chambers@cnw.com 47
18	dolphin@cnw.com 93
10	eliberty@cnw.com 18
19	elizabeth@cnw.com 5
19	galen@cnw.com 54
20	grant@cnw.com 97
20	haaland@cnw.com 3
	hc3ruthm@cnw.com 9
21	jwmurphy@cnw.com 61
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2	mcgrrrrr@cnw.com 63 mcm@cnw.com 17
3	nonie@cnw.com 40 nwff@cnw.com 1
	rbavis@cnw.com 22 rickster@cnw.com 5
4	sandman@cnw.com 1 sycamore@cnw.com 34
5	talexan@cnw.com 2
6	vickip@cnw.com 20
7	jmstenson@comcast.net 3
8	terrywcm@comcast.net 1 innkeepers@cottagecreekinn.com 15
9	dwgracia@coxgracia.com 2 lcampbell@coxgracia.com 38
	pwoods@coxgracia.com 26 pers-966108289@craigslist.org 1
10	jensen@cupfart.com 1 newman@cupfart.com 2
11	mark@d3d.com 2 email@darrylr.com 2
12	amcere.14762c@digitalword.net 1 astlavista.us@digitalword.net 1
13	broderbund@digitalword.net 9 clickngoshopping.com@digitalword.net 2
14	kirstenbos.com@digitalword.net 1 armando@district10littleleague.org 2
15	drewdog@drewdog.com 157 geigerk@duq.edu 2
16	edward@edwardhawkins.com 16 llama@eitexam.com 19 iunk@elitezorro.com 3
17	junk@elitezorro.com 3 sales@engagent.com 4 domains@escapeartist.net 11
18	mike@escapeartist.net 209 support@escapeartist.net 1
19	jackie@fauntleroyucc.org 2 jackied@fauntleroyucc.org 2
20	ra@financialexperts.com 74 knight@foxglv.com 6
21	joanne@gardenwhite.com 21 germanca@germanauto.com 5
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2	brian@hedlundbuilders.com 1
	darien.mckinnon@hedlundbuilders.com 1
2	timhill@helmersmusic.com 1
3	info@herrerahomes.com 1
	cat@howardmandville.com 2
4	dan@howardmandville.com 1
	dave@howardmandville.com 70
5	frank@howardmandville.com 4
-	geoff@howardmandville.com 2
6	jay@howardmandville.com 84
U	jennifer@howardmandville.com 1
7	mandmail@howardmandville.com 21
7	nic@howardmandville.com 2
	wayne@howardmandville.com 150
8	sales@ironhorsesales.com 60
	3digital@isomedia.com 1
9	aandc@isomedia.com 64
	adm@isomedia.com 2
10	advfire@isomedia.com 1
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	alamo@isomedia.com 5
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	alexa@isomedia.com 1
14	alexh@isomedia.com 1
	alexkerr@isomedia.com 1
15	algwen@isomedia.com 1
	alissa@isomedia.com 20
16	aljulie@isomedia.com 19
10	amiller@isomedia.com 97
17	andie777@isomedia.com 53
1 /	andy@isomedia.com 1
1.0	anthonya@isomedia.com 1
18	apantelias@isomedia.com 35
	armando@isomedia.com 5
19	ars101@isomedia.com 103
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	ashbri@isomedia.com 19
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3	barbc@isomedia.com 1
	barboo3@isomedia.com 46
4	baughd@isomedia.com 1
	baughman@isomedia.com 1
5	baywolf@isomedia.com 1
	beesting@isomedia.com 19
6	bellasoc@isomedia.com 28
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13	bluestar1@isomedia.com 41
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14	bobandcarol125@isomedia.com 20
	bobgaines@isomedia.com 1
15	bricker@isomedia.com 4
	brucebam@isomedia.com 1
16	brucej@isomedia.com 120
	brumbach@isomedia.com 39
17	bryanh@isomedia.com 1
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18	ca@isomedia.com 100
10	cadserv@isomedia.com 15
	candymarinemom@isomedia.com 8
19	canna@isomedia.com 2
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21	caryl@isomedia.com 75
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	cb@isomedia.com 23
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3	cdf@isomedia.com 18
	cecilia.nguyen@isomedia.com 20
4	cfox@isomedia.com 189
	chambers@isomedia.com 170
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,	clanzinger@isomedia.com 90
1.0	clifton@isomedia.com 2
10	cmrolfe@isomedia.com 5
	coasterlisa@isomedia.com 70
11	colleen@isomedia.com 83
	comrel@isomedia.com 2
12	concon@isomedia.com 1
	conwaycheryl@isomedia.com 12
13	coop@isomedia.com 33
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14	corgisonly@isomedia.com 51
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	counters@isomedia.com 36
15	covich@isomedia.com 52
	crabapple@isomedia.com 84
16	crh1@isomedia.com 21
	crowther@isomedia.com 1
17	crutch@isomedia.com 192
1,	crystal@isomedia.com 1
18	ctkillian@isomedia.com 109
10	cultum@isomedia.com 6
	cws@isomedia.com 174
19	cybertek@isomedia.com 18
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20	dalei@isomedia.com 2
	dalel@isomedia.com 116
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	danheit@isomedia.com 14
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	darktower@isomedia.com 2
3	daryl@isomedia.com 5
3	dave@isomedia.com 106
	dbforbis@isomedia.com 1
4	dcash@isomedia.com 187
	dcoffman@isomedia.com 1
5	dcress@isomedia.com 1
	ddavis@isomedia.com 18
6	ddq425@isomedia.com 10
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7	de4000@isomedia.com 68
/	deborahm@isomedia.com 1
_	dek@isomedia.com 1
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	dqdix@isomedia.com 48
15	drains@isomedia.com 18
13	dramaqueen@isomedia.com 66
	drburke@isomedia.com 18
16	drforrey@isomedia.com 1
	drt@isomedia.com 47
17	dward@isomedia.com 12
	dweeding@isomedia.com 51
18	dwines@isomedia.com 1
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9	geon116@isomedia.com 19
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	COMPLAINT FOR DAMAGES, PENALTIES
22	AND INJUNCTIVE RELIEF -17
	ISOMEDIA v. TELEBRANDS, INC., et al.
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12	COMPLAINT FOR DAMAGES, PENALTIES
22	AND INJUNCTIVE RELIEF -18
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	COMPLAINT FOR DAMAGES, PENALTIES,
22	AND INJUNCTIVE RELIEF -19
	ISOMEDIA v. TELEBRANDS, INC., et al.
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	AND INJUNCTIVE RELIEF -20 ISOMEDIA v. TELEBRANDS, INC., et al.
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	COMPLAINT FOR DAMAGES, PENALTIES,
22	AND INJUNCTIVE RELIEF -21
	ISOMEDIA v. TELEBRANDS, INC., et al.
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22	COMPLAINT FOR DAMAGES, PENALTIES
	AND INJUNCTIVE RELIEF -22
22	ISOMEDIA v. TELEBRANDS, INC., et al.
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22	AND INJUNCTIVE RELIEF -23
	ISOMEDIA v. TELEBRANDS, INC., et al.
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22	COMPLAINT FOR DAMAGES, PENALTIES, AND INJUNCTIVE RELIEF -24
23	ISOMEDIA v. TELEBRANDS, INC., et al.

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	coolguy@netsplash.com 1
8	counter@netsplash.com 1
J	crafts@netsplash.com 3
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22	COMPLAINT FOR DAMAGES, PENALTIES,
44	AND INJUNCTIVE RELIEF -25
23	ISOMEDIA v. TELEBRANDS, INC., et al.

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22	COMPLAINT FOR DAMAGES, PENALTIES,
22	AND INJUNCTIVE RELIEF -26
22	ISOMEDIA v. TELEBRANDS, INC., et al.
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17	platinum@netsplash.com 34
1 /	preston@netsplash.com 1
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22	COMPLAINT FOR DAMAGES, PENALTIES, AND INJUNCTIVE RELIEF -27
-	ISOMEDIA v. TELEBRANDS, INC., et al.
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22	COMPLAINT FOR DAMAGES, PENALTIES,
44	AND INJUNCTIVE RELIEF -28
23	ISOMEDIA v. TELEBRANDS, INC., et al.

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	COMPLAINT FOR DAMAGES, PENALTIES,
22	AND INJUNCTIVE RELIEF -29
	ISOMEDIA v. TELEBRANDS, INC., et al.
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22	COMPLAINT FOR DAMAGES, PENALTIES, AND INJUNCTIVE RELIEF -30
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